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**BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Telephone Number Portability)

CC Docket No. 95-116

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

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SUMMARY

In light of the strong showing of support in the record for CTIA's Petition, the Commission should grant a nine month extension of the implementation deadline for wireless number portability. The Petition and the facts presented by various commenters clearly demonstrate that a waiver is in the public interest. Moreover, CTIA has fulfilled the Commission's legal requirements to grant a waiver of its rules.

Furthermore, granting an extension will not impact other significant numbering issues such as number conservation. In reviewing CTIA's request for an extension of the wireless number portability deadline, the Bureau should not confuse the objectives of implementing number portability (i.e., to promote competition) with the separate and distinct objectives of number pooling (i.e., to conserve numbers).

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The Cellular Telecommunications Industry Association ("CTIA")¹ submits these Reply Comments in the above-captioned proceeding.² In light of the strong showing of support in the record for CTIA's Petition, CTIA urges the Commission to grant a nine month extension of the implementation deadline for wireless number portability. The Petition and the facts presented by various commenters clearly demonstrate that a waiver is in the public interest. Furthermore, granting an extension will not impact other significant numbering issues such as number conservation.

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, and includes forty-eight of the fifty largest cellular and broadband PCS providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² "Wireless Telecommunications Bureau Seeks Comment on CTIA Petition for Waiver to Extend the Implementation Deadlines of Wireless Number Portability," Public Notice, CC Docket No. 95-116, DA 97-2579 (Dec. 9, 1997).

I. THE WIRELESS TELECOMMUNICATIONS BUREAU SHOULD GRANT CTIA'S PETITION FOR ALL CMRS PROVIDERS UNABLE TO MEET THE COMMISSION'S DEADLINE.

By authorizing the Wireless Telecommunications Bureau ("WTB") to delay the implementation deadlines for service provider number portability, the Commission acknowledged that the wireless industry faced unique obstacles in developing and implementing service provider number portability. The Commission also anticipated that carriers, on a case by case basis, might be unable to satisfy its number portability requirements and, hence, established a procedure by which carriers could "file with the Commission . . . a petition to extend the time by which implementation in its network will be completed."³ CTIA filed its Petition on behalf of all of its members when it became clear that the wireless industry would be unable to meet the Commission's deadline due to the unique technical difficulties associated with wireless service.⁴ CTIA's Petition is premised

³ In the Matter of Number Portability, CC Docket No. 95-116, First Report and Order at ¶ 168 (July 2, 1996) ("First Report and Order"). A Petition filed under these provisions of the Commission's rules must meet a five-part test delineated below.

⁴ While Omnipoint asserts that PCS carriers utilizing GSM technology can implement number portability on schedule, this does not include any cellular carrier nor does it include thirty-two of the top forty PCS carriers who are not utilizing GSM technology. See Cellular Carriers' Digital Deployment Plans, Mobile Phone News, Dec. 8, 1997, at 4-7; RCR Top 20 PCS Operators (1-20), Radio Communications Reports, Dec. 15, 1997, at S18; RCR Top 20 PCS Operators (21-40), Radio Communications Reports, Dec. 15, 1997, at S20. Moreover, implementation of number portability by GSM carriers may preclude roaming between GSM carriers and other CMRS carriers.

on the belief that individual waiver applications by almost every wireless carrier would be grossly inefficient and the technical complexity of maintaining nationwide roaming goes beyond the capability of any single carrier. In light of the potential barrage of waiver requests that would significantly harm the number portability implementation process, the Commission must not limit its consideration merely to an evaluation of compliance with the five-part test established in the First Report and Order. Rather, its overriding statutory obligation compels it ultimately to determine whether granting the Petition on its merits would serve the public interest.

A. Waiver Of The CMRS Number Portability Deadlines Is Consistent With The Commission's Number Portability Waiver Standard.

The Commission requires that any carrier seeking a waiver set forth the following:

- (1) the facts that demonstrate why the carrier is unable to meet [the] deployment schedule;
- (2) a detailed explanation of the activities that the carrier has undertaken to meet the implementation schedule . . . ;
- (3) an identification of the particular switch for which the extension is requested;
- (4) the time within which the carrier will complete deployment in the affected switches; and
- (5) a proposed schedule with milestones for meeting the deployment date.⁵

⁵ First Report and Order at ¶ 168.

CTIA's Petition and the supporting record present the WTB with detailed information demonstrating the clear need for an extension of the number portability deadline.

The representations made by CTIA in its Petition and herein, the declarations of both Arthur Prest and Carol Peters who have actively participated in the wireless number portability fora,⁶ and all of the comments filed in support of the Petition, demonstrate the industry's inability to meet the Commission's deployment schedule as required by the first prong of the Commission's waiver standard.⁷ Specifically, CTIA's Petition detailed the complexity of the wireless number portability solution and the multitude of systems which need to be modified for its effective implementation. These factors, along with unresolved matters concerning wireline number portability⁸ and

⁶ See Declaration of Arthur L. Prest, CTIA Petition; Declaration of Carol H. Peters, Comments of AT&T Wireless Services.

⁷ Notwithstanding Omnipoint's assertion that it intends to implement wireless number portability by the prescribed date, CTIA's Petition was supported by every wireless facilities-based carrier filing comments in the proceeding. See Comments of Omnipoint Communication at 2-3 ("If, however, the Bureau should choose to waive or stay any of the dates in the implementation schedule, wireline carriers must continue to be capable of porting telephone numbers to and from number portability capable wireless carriers by the existing date of June 30, 1999.")

⁸ It appears that even wireline carriers anticipate difficulties beyond their control in meeting the implementation schedules set forth by the Commission. This is clear through the North American Numbering Council's recent letter "advising that FCC's Phase I implementation schedule for Local Number Portability (LNP) deployment will be significantly affected . . . by vendor failure to provide a stable platform to support local number portability." Common Carrier Bureau Seeks Comment On the NANC Recommendation to Delay Filing of 47 C.F.R. § 52.3(e) Waiver

standards setting for wireless number portability,⁹ render timely implementation unworkable.¹⁰

CTIA's Petition also satisfies the second prong of the Commission's waiver test. CTIA attached to its Petition an eighty-one page report on wireless number portability. In the report, CTIA offered "a detailed explanation of the activities that [the industry] has undertaken to meet the implementation schedule."¹¹ The Declaration of Arthur Prest supplied the WTB with further details of the different activities of the Numbering Advisory Group, comprised of wireless service providers and operating as the forum for developing wireless number portability

Requests by Individual Carriers for Local Number Portability Phase 1 Implementation, Public Notice, CC Docket No. 95-116, DA 98-109 (released Jan. 21, 1998).

⁹ As noted by AirTouch, "At this time it is not expected that national standards incorporating the separation of the MDN and MIN will be finalized until late this year. It is only after these standards are finalized that vendors are able to commence necessary design, engineering, and manufacture work necessary to develop number portability solutions -- a process which ordinarily takes a minimum of 18-to-24 months from the completion of standards." Comments of AirTouch at 2. Although a "Phase I" standard for implementing the wireless to wireline portability interface is now in the balloting process, the standards bodies still have not completed standards for crucial issues that must be addressed for wireless to wireless portability, such as the method by which portability capable wireless switches will communicate with non-portability capable switches and databases. These "Phase II" standards are still under consideration.

¹⁰ See CTIA Petition at 2-3, 6-7 (describing the vast implications of the wireless number portability solution including its effect on nationwide roaming and modifications to each carrier's customer service and back office support networks.)

¹¹ First Report and Order at ¶ 168.

solutions. While the Petition may not have expressly identified the specific switches for which an extension of the deadlines was being sought, as specified in the third prong of the Commission's standard, the Petition, by its terms, was intended to apply to all wireless carriers and all their switches.

The fourth and fifth prongs of the Commission's waiver guidelines request information about a carrier's ability to implement number portability within a specified schedule. CTIA's petition is premised on two facts which make carrier compliance with the fourth and fifth prongs virtually impossible, if not irrelevant. First, virtually all CMRS providers will be technically incapable of implementing number portability in compliance with the Commission's existing schedule. Second, number portability must be implemented by all carriers simultaneously to support nationwide roaming.¹² Thus, no one carrier is qualified to represent to the Commission when it will complete deployment or when proposed milestones for technical achievements will be realized.

¹² See CTIA Petition at n.11 ("[E]very carrier nationwide will have to upgrade its systems to support roaming. . . . Without this upgrade ported subscribers will not be able to roam outside of the 100 largest MSAs."); Comments of AirTouch at 4 ("Ubiquitous roaming requires all switches operated by all CMRS providers (large and small) must be capable of recognizing and distinguishing MDNs from MINs -- so that roamers with ported numbers can continue to roam outside their home market. What is more, while CMRS carriers must test and implement number portability capability on a phased basis, all CMRS carriers and switches must be ready to cut over to number portability 'on line' at the same time.") (emphasis in original).

CTIA is interested in working with the Commission to establish reasonable guidelines for meeting wireless number portability milestones. However, the Commission should not make the same mistake twice. The implementation deadline for wireless number portability, as established in the underlying proceeding to the current Petition, is currently pending appeal in the U.S. Court of Appeals on the grounds that the deadline was implemented in an arbitrary and capricious manner and unsupported by substantial evidence in the record.¹³ The Commission should take this opportunity to base any milestones for implementation on specific technical information from the record, rather than on a cursory wish-list. The Commission should consider the unique ways in which number portability affects wireless carriers. Of equal importance, the Commission should recognize that wireless number portability is dependent upon the establishment of wireline number portability infrastructure: prior to wireless number portability implementation, wireline carriers must first complete their tasks and create interface standards which must be built by equipment vendors. The Commission had not adequately considered these facts on the record when it summarily selected June 30, 1999 as the deadline for wireless number portability implementation.

¹³ See Bell Atlantic NYNEX Mobile, Inc. v. FCC, No. 97-9551 (10th Cir.), Initial Brief for Petitioner and Intervenor in Support of Petitioner at 37-41 ("Even commenters that generally supported number portability agreed that there were technical problems. Yet the FCC selectively used these general comments to impose the rules, while brushing aside the same commenters' concerns as to technical feasibility.") (Oct. 22, 1997).

The concerns detailed above clearly demonstrate the need for a delay in the implementation of wireless number portability.¹⁴ CTIA and other commenters have demonstrated the difficulties of meeting a deadline that was established without full consideration or anticipation of the many complexities associated with wireless number portability. As such, the public interest compels consideration of an industry-wide waiver analysis.

B. The Commission Should Grant CTIA's Petition Consistent With Judicial Precedent.

Whether the WTB determines that each element of the waiver guidelines conceived in the First Report and Order is satisfied, it cannot be held captive only to those principles when doing so would be contrary to the public interest.¹⁵ CTIA's Petition and

¹⁴ The substantial facts that support extension of the deadline negate any claims that CTIA's motivations favor one technology over another. See MCI Comments at 7, 8 (stating that CTIA's cellular providers "have the most to lose through the implementation of number portability" and that PCS providers want to see wireless portability "implemented quickly to foster wireless-wireless competition with incumbent cellular providers."). The CTIA Board of Directors represents both cellular and PCS carriers who voted unanimously to support the Petition. Additionally, of the seventeen commenters in this proceeding, six carriers supporting the Petition own PCS licenses and three of the supporting commenters are SMR providers.

¹⁵ See City of New York Municipal Broadcasting System v. FCC, 744 F.2d 827, 835 (D.C. Cir. 1984) (The Commission's decision is a "'recognition of th[e] basic principle' that the Commission 'is not the prisoner of its own regulations and that the public interest . . . must always take precedence over strict compliance with the provisions of the Rules. . . . The Supreme Court and the Court of Appeals have both recognized that there are circumstances where the Commission's Rules must be waived to authorize operations contrary to their specific terms.'" (quoting Application of City of New York Municipal Broadcasting System (WNYC), 15 RR (P&F) 565, 635-36 (1957) (citations omitted))).

the supporting comments satisfy the requirements for a general waiver.

The D.C. Circuit has concluded that "when [] a request [for waiver] is stated with clarity and accompanied by supporting data, it is not subject to perfunctory treatment, but must be given a hard look."¹⁶ In this instance, CTIA has provided the WTB with sufficient evidence to support granting its request. As noted by MCI, the court in WAIT Radio required the Commission to consider "hardship . . . or more effective implementation of overall policy" when making a waiver determination.¹⁷ Clearly technical unfeasibility is an insurmountable hardship to meeting the Commission's implementation schedule and waiver of this deadline for nine months will achieve "a more effective implementation of overall policy."¹⁸

The CTIA Petition and the comments in support of the Petition supply the Commission with ample evidence demonstrating that it is technically impossible to meet the Commission's deadline for wireless number portability. The record contains no evidence to the contrary. Consideration of the technical obstacles is not only sensible, but legally required.¹⁹ In Telocator the D.C. Circuit noted that

¹⁶ Florida Cellular Mobil Communications Corporation v. FCC, 28 F.3d 191, 198 (D.C. Cir. 1994) (quoting WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

¹⁷ Comments of MCI at 5.; WAIT Radio at 1159.

¹⁸ WAIT Radio at 1159.

¹⁹ See Telocator Network of America v. FCC, 691 F.2d 525 (D.C. Cir. 1982).

[t]here is only one element in the Commission's treatment of the technical-coordination problem that gives us pause: the Commission's startling characterization . . . of the technical viability . . . as an 'irrelevant' issue. . . . For the Commission, after engaging in almost a decade of controversy over the point, to announce that it did not matter anyway lends plausibility to Telocator's picture of an agency clinging blindly and irrationally to a₂₀ plan that for some wild reason has struck its fancy.

Although the court eventually agreed with the Commission that the technical obstacles had been resolved and that the Commission had reached "a reasonable conclusion having ample support in the record,"²¹ the Court also stated that "[w]e do not condone the Commission's cavalier handling of this [technical feasibility] point . . . the Commission not only opened itself to accusations of capriciousness but also made itself look somewhat absurd."²² CTIA's Petition confirms that it is technically impossible to implement wireless number portability in the prescribed time-period. The Commission should not dismiss this fact as "irrelevant" but rather should use this as the basis for granting a waiver of the existing deadlines. To do otherwise, without contrary evidence in the record, negates the principles established by the courts and suggests capricious regulation.

II. THE WIRELESS BUREAU SHOULD NOT CONFUSE THE ISSUE OF NUMBER PORTABILITY IMPLEMENTATION WITH NUMBERING ADMINISTRATION AND CONSERVATION ISSUES

The Commission established rules mandating number portability in order to promote competition among

²⁰ Id. at 540-41.

²¹ Id. at 541 (emphasis added).

²² Id.

telecommunications carriers.²³ The Commission did not adopt number portability requirements to address numbering administration and conservation issues. In reviewing CTIA's Petition, the WTB should ensure that the objectives and goals of the number portability proceeding are not clouded by arguments regarding number conservation and, specifically, number pooling.²⁴

As explained in various pending proceedings on number pooling,²⁵ number pooling is a method of number conservation which happens to be technologically dependent on the implementation of number portability. CTIA has openly supported number pooling if all carriers, including wireless carriers, are given adequate numbering resources.²⁶ Any opposition to number pooling methodologies are based on a concern for nationwide uniform standards governing pooling throughout the various states that ensure nondiscriminatory access to numbers. This issue is separate and distinct from the technological hurdles that must be

²³ First Report and Order at ¶ 157.

²⁴ See MCI Comments at 9-10, WorldCom Comments at 7-8.

²⁵ See, e.g., "Common Carrier Bureau Seeks Comment on Petition for Declaratory Ruling and Request for Expedited Action filed by Providers of Commercial Radio Service in Pennsylvania," Public Notice (released Nov. 18, 1997).


²⁶ In the Matter of Petition for Declaratory Ruling and Request for Expedited Action Filed by Providers of Commercial Mobile Radio Service in Pennsylvania, NSD File No. L-97-42, Comments of CTIA at 5 (filed Dec. 1, 1997).

overcome to achieve number portability implementation and should be treated as such.²⁷

CONCLUSION

For the reasons stated above, the Commission should grant CTIA's request for an extension of the implementation deadlines for service provider number portability. The record clearly supports the need for the extension and the public interest would in no way be harmed by such action.

Respectfully submitted,



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²⁷ Contrary to the claims of MCI and WorldCom, CTIA's Petition will not have any impact on the acceleration of number depletion since, as noted by CTIA and others in the pending number pooling proceedings, existing methods other than number pooling are available to address number shortages.